

**Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) Policy
Fauquier County, Virginia**

Policy Title: PPEA Policy
Policy Number: FDP-02

Effective Date: 9/13/2013
Supersedes Policy: Rev. 6/12/2006

I. INTRODUCTION:

This policy sets forth the legal authority and responsibility for projects proposed pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) and serves as the required guidelines as referenced in 56-575.1 of the PPEA.

II. PURPOSE:

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§ 56-575.1, *et seq.*, (the "PPEA (the "Act")) grants the County of Fauquier, a responsible public entity as defined in the Act, the authority to create public-private partnerships for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between a private entity, as defined in the Act, and the County will define the respective rights and obligations of the County and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA as applicable and as may be amended. Further definition of terms is found in Appendix C.

III. GENERAL PROVISIONS:

A. Application.

1. In order for a project to come under the PPEA, it must meet the definition of a "qualifying project" as defined in the applicable Act as (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; or (vii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.
2. The Act establishes requirements that the County must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition, the Act specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity. Any proposal received or solicited by the County pursuant to the PPEA will be reviewed in accordance with the provisions of the applicable Act and this policy as they may apply.

3. The County has adopted this policy to implement the PPEA by County Board of Supervisors resolution dated March 15, 2004, and amended (6/12/2006). This policy applies to all procurements under the PPEA where the County is the “responsible public entity” or where the County is the “affected local jurisdiction” within the meaning of Virginia Code § 56-575.1. For purposes of this policy, unless otherwise indicated, “Board” means the Board of Supervisors of Fauquier County as applicable, “County Administrator” means the Fauquier County Administrator, as applicable, and “County” means the Fauquier County Board of Supervisors, as applicable.
4. The County Administrator is authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.
5. The individual designated by the County Administrator to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this adopted policy shall be the Purchasing Agent.
6. This policy may only be revised by an amendment adopted by the County Board of Supervisors.
7. The County Administrator shall have overall responsibility and be the primary contact for implementation of this policy.

B. Effective Date.

Contracts entered into prior to passage of this policy shall continue to be governed by the PPEA policy and regulations of Fauquier County and Commonwealth of Virginia in effect at the time those contracts were executed.

C. Severability.

If any provision of this policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provision or application, and to this end the provisions of this policy are declared to be severable.

IV. PROPOSAL PROVISIONS:

A. Proposal Submission

1. A proposal under this Act may be either solicited by the County or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.
2. The Act allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing

arrangements may include the issuance of debt instruments, equity or other securities or obligations.

3. Proposals should be prepared simply and economically, following the format provided herein and providing a concise description of the Proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The County may, at any time, require the Proposer to provide additional information and clarification to the submission.

B. Affected Local Jurisdictions

The term "affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of submission of the proposal to the County. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided to the County within five (5) business days of such delivery. Any affected jurisdiction shall have 60 days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) jurisdiction's capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from other affected local jurisdictions.

1. Proposal Review Fee

For unsolicited proposals and unsolicited competing proposals, the County will require an initial processing fee of \$5,000 with an additional proposal fee of \$10,000 to be charged should the project proceed beyond the initial review. The initial processing fee shall be submitted with the initial proposal or competing proposal. The County will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, and outside consultants, financial advisors, engineers and attorney's fees, associated with evaluating the proposal. In the event either the initial processing fee of \$5,000 or the additional proposal fee of \$10,000 is insufficient to cover all of the direct costs incurred by the County, the Proposer shall pay such additional direct costs incurred by the County in reviewing the proposal.

C. Freedom of Information Act

1. Generally, proposal documents submitted by private entities are subject to the

Virginia Freedom of Information Act ("FOIA"). In accordance with § 2.2-3705.6(11) of FOIA, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the County under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the County or the private entity or the bargaining position of either party.

2. Subsection 56-575.4 (G) of the PPEA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator pursuant to 2.2-3705.6 (11). When the private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the Proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the Proposer. If the determination regarding protection or the scope thereof differs from the Proposer's request, then the County will accord the Proposer a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the Proposer, the Proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

D. Use of Public Funds

Virginia constitutional and statutory requirements and County ordinances and policies as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the Act. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

E. Posting of Proposals

Proposals (solicited or unsolicited) submitted in accordance with the requirements herein shall be posted by the County within ten (10) business days after acceptance such

proposals by the Board. Posting shall be on the County's website for a minimum of ten (10) calendar days, and by publication, in a newspaper of general circulation in the area in which the contract is to be performed with a summary of the proposal(s) and the location where copies of the proposal(s) are available for inspection. A copy of the proposal(s) shall also be made available for public inspection at the Procurement Division.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable laws not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

G. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the Proposer or Proposers, the County will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the County determines not to accept the proposal and not to proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the Proposer(s).
2. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice within ten (10) working days in a public area regularly used by the County for posting of public notices for a period of not less than 45 days. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have 45 days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the Proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the policy adopted by the County and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.
3. One copy of accepted unsolicited proposal(s) shall be made available for public inspection in the Procurement Division in accordance with the provisions of § IV.C above.

V. SOLICITED PROPOSALS:

- A. The County may solicit proposals from private entities to develop, acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects or qualifying transportation facilities. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the applicable Act.

- B. The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

VI. UNSOLICITED PROPOSALS:

- A. The PPEA permits the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project. The County may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.
- B. Proposals should be prepared simply and economically, following the format provided herein and providing a concise description of the Proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The County may, at any time, require the Proposer to provide additional information and clarification to the submission.

VII. PPEA PROPOSAL PREPARATION AND SUBMISSION (UNSOLICITED AND SOLICITED)

- A. Format for Submissions at the Conceptual Stage

The County will require that all proposals (both solicited and unsolicited) at the conceptual stage contain the following information in the following format plus such other information as the County may reasonably request to complete its review or to comply with the requirements of the PPEA:

1. Completion and inclusion of a Proposer's Certification which is found as Appendix A to this policy.
2. Qualifications and Experience
 - a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
 - b. Describe the experience of the firm or consortium of firms making the

proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.

- c. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
- d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
- e. Identify any persons known to the Proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

3. Project Characteristics

- f. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- g. Identify and fully describe any work to be performed by the County or any other public entity.
- h. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- i. Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.
- j. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards.

- k. Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.
 - l. Propose allocation of risk and liability, and assurances for timely completion of the project.
 - m. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
 - n. Provide information relative to phased openings of the proposed project.
4. Project Financing
- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's adopted operational standards.
 - c. Include a list and discussion of assumptions underlying all major elements of the plan.
 - d. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
 - e. Identify any local, state or federal resources that the Proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
 - f. Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is not investment grade, the County may require the use of credit enhancements.
 - g. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or, conversely, if the firm is to receive the sole or primary benefit of this potential.

- h. Outline the financial penalties, if any, that would result should the County wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
- i. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

5. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the County and the overall community.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- c. Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.
- e. Compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.

6. Additional material and information as the County may reasonably request.

B. Format for Submissions at the Detailed Stage

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project or facility.
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the Proposer to accommodate such crossings.
3. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction.

4. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the Proposer intends to request the County or affected jurisdiction to condemn.
5. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
6. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County adopted service levels and standards.
7. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
8. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
9. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
10. Explanation of how the proposed project would impact the County's or affected jurisdiction's development plans.
11. Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the Proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
12. Additional material and information as the County may reasonably request.

VIII. PROPOSAL EVALUATION AND SELECTION CRITERIA

A. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed using:
 - a. Standard "competitive sealed bidding" procurement procedures consistent with the VPPA; or
 - b. Procedures developed by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The County may proceed using competitive negotiation procedures only if it makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (1) the probable scope, complexity or urgency of need, or (2) the risk sharing, added value, increase in funding or economic benefit from the project would otherwise not be available.
3. After reviewing the original proposal(s) submitted during the appropriate notice period(s), the County may determine:
 - a. not to proceed further with any proposal (solicited or unsolicited),
 - b. to proceed to the detailed phase of review with the original unsolicited proposal,
 - c. to proceed to the detailed phase with a competing unsolicited proposal, or
 - d. to proceed to the detailed phase with one or more solicited or unsolicited proposals.

B. In evaluating any request for proposal, the County may rely upon internal staff reports or the advice of outside advisors or consultants. Some or all of the following items, along with the specified information required herein, shall be considered in the evaluation and selection of PPEA proposals. The County, however, reserves and retains the right to reject any request for proposal at any time for any reason whatsoever.

1. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the Proposer possesses the requisite qualifications and experience may

include, but are not necessarily limited to:

- a. Experience with similar projects;
- b. Demonstration of ability to perform work;
- c. Leadership structure;
- d. Project manager's experience;
- e. Management approach;
- f. Financial condition; and
- g. Project ownership.

2. Project Characteristics

Factors to be considered in determining the project characteristics may include, along with the specified information required herein, but are not necessarily limited to, the following:

- a. Project definition;
- b. Proposed project schedule;
- c. Operation of the project;
- d. Technology; technical feasibility;
- e. Conformity to State, County or affected jurisdiction laws, regulations, and standards;
- f. Environmental impacts;
- g. Condemnation impacts;
- h. State and local permits; and
- i. Maintenance of the project.

3. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include, along with the specified information required herein, but are not necessarily limited to, the following:

- a. Cost and cost benefit to the County;
- b. Financing and the impact on the debt or debt burden of the County;
- c. Financial plan including default implications;

- d. Estimated cost; including debt source, operating costs, etc.; and
 - e. Life-cycle cost analysis.
4. Project Benefit and Compatibility
- Factors to be considered in determining the proposed project's compatibility with the County's, affected jurisdiction's or regional comprehensive or development plans may include, along with the specified information required herein, but are not necessarily limited to, the following:
- a. Community benefits;
 - b. Community support or opposition, or both;
 - c. Public involvement strategy;
 - d. Compatibility with existing and planned facilities;
 - e. Compatibility with County, regional, and state economic development efforts; and
 - f. Compatibility with the land use and/or transportation plans of the County and/or those of any affected jurisdiction.

IX. COMPREHENSIVE AND INTERIM AGREEMENTS

- A. At least thirty days prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals. The County shall give notice of such hearing by posting on County website and in a newspaper of general circulation in the area where the contract is to be performed, a summary of the proposed agreements and the location where copies of the proposals and proposed agreement are available for public inspection. The Notice shall be provided at least ten (10) days prior to the date of the public hearing.
- B. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected Proposer shall enter into a Comprehensive Agreement with the County. Each contract shall define the rights and obligations of the County and the selected Proposer with regard to the project.
- C. The terms of the Comprehensive Agreement shall be tailored to address the specifics of the project and shall include but not be limited to:
 - 1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project; in a form and amount satisfactory to the County and on a form provided by the County.

2. The review and approval of plans and specifications for the qualifying project by the County;
 3. The rights of the County to inspect the qualifying project to ensure compliance with the contract;
 4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
 5. The monitoring of the practices of the operator by the County to ensure proper maintenance, safety, use and management of the qualifying project;
 6. The terms under which the operator will reimburse the County for services provided;
 7. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the contract is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
 8. The terms under which the operator will file appropriate financial statements on a periodic basis.
 9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
 - a. A copy of any service contract shall be filed with the County.
 - b. A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
 10. The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project; and
 11. Other requirements of the PPEA or provisions that the County determines serve the public purpose of the PPEA.
- D. Prior to or in connection with the negotiation of the comprehensive agreement, the County may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. The scope of an interim agreement may include, but is not limited to:
1. Project planning and development;

2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

E. Once negotiations have concluded, the following shall occur:

1. The County shall make the proposed agreement available on the County website and in the offices of the Procurement Division for at least 10 business days prior to the public hearing to be held by the County.
2. At least thirty days prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals. Such hearing may coincide with a regularly scheduled meeting of the County Board of Supervisors; comments may be submitted to the County at any time during the notice period and prior to the public hearing. After the public hearing and the end of the public comment period, no additional posting shall be required based on any public comment received.
2. The proposed agreement shall be posted in the following manner:
 - a. On the County website.
 - b. In addition to the posting requirements, a copy of the proposals shall be made available for public inspection in the offices of the Procurement Division. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity.
 - c. Any studies and analyses considered by the County in its review of a proposal shall be disclosed at some point prior to the execution of an interim or comprehensive agreement.
 - d. Once an interim agreement or a comprehensive agreement has been entered into, the County shall make procurement records available for public inspection, upon request.
 - e. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents.

F. Any comprehensive agreement, interim agreement, and any amendments thereto shall first be approved by the Board of Supervisors and then executed in writing by persons having the authority to do so. For a mixed project involving both public schools and other facilities, the Board of Supervisors and School Board, may in their discretion, both enter

into the same comprehensive agreement with the operator for the entire mixed project, with their respective responsibilities delineated in the agreement.

- G. As required by Va. Code § 56-575.9.F., when the County enters into an agreement pursuant to the PPEA, a copy should be submitted to the Auditor of Public Accounts within 30 days thereafter at the following address:

Audit of Public Accounts
P.O. Box 1295
Richmond, VA 23218

The copy should be sent by certified-mail, return receipt requested, with a copy of the forwarding letter and return-receipt kept in the procurement file.

X. PROTESTS OF PPEA PROCUREMENTS:

The following are the exclusive procedures for contesting or challenging (protesting) (a) the terms or conditions of any solicitation of proposals by the County pursuant to the PPEA, (b) nonselection of a PPEA proposal for further consideration, and (c) the selection of any PPEA proposal for entry into an Interim and/or Comprehensive agreement or the entry into an Interim and/or Comprehensive agreement under the PPEA:

- A. Any protest to any term or condition of a solicitation must be made in writing and delivered to the County Administrator so it is received by the County Administrator before proposals are due under the solicitation. Any protest not received in this manner shall be deemed to be waived.
- B. A protest of a County decision not to select a PPEA proposal for further consideration may only be made by the entity who submitted the proposal at issue. A protest of a County decision to select a PPEA proposal for entry into an agreement or to enter into an agreement may only be made by an entity who submitted a proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the County's decision. Protests shall only be granted if (1) the protester has complied fully with this paragraph X and there has been a violation of law, this policy, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.
- C. Any entity desiring to protest a County decision not to select a PPEA proposal for further consideration, to select a PPEA proposal for entry into an agreement, or to enter into an agreement shall submit the protest in writing and deliver it so that it is received by the County Administrator not later than 10 business days after announcement of the decision. Any protest not received in this manner shall be deemed to be waived.
- D. The County Administrator shall issue a written decision on a protest within 10 days of

its receipt by the County Administrator.

- E. If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing suit in the Circuit Court for Fauquier County and serving the County with such suit within 10 days of such denial. Otherwise, the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
- F. The exclusive relief allowed if a protest is granted is to void the decision being protested. Under no circumstances will any monetary relief be allowed.
- G. Strictly following these procedures shall be a mandatory prerequisite for any challenge of any nature to a decision by the County relating to terms and conditions of a PPEA solicitation, nonselection of a PPEA proposal for further consideration, selection of a PPEA proposal, or entry into an interim and/or comprehensive agreement. A failure to follow all these procedures strictly shall constitute a waiver of any right to challenge judicially a County decision (a) as to terms or conditions in a PPEA solicitation, (b) not to select a PPEA proposal for further consideration, (c) to select a PPEA proposal, or (d) to enter into an interim and/or comprehensive agreement.

XI. NOTICE AND POSTING REQUIREMENTS.

See Appendix B for an outline of these requirements and the associated timelines.

APPENDIX A

Proposer's Certification

Proposer's Name: _____

Proposer's Address

Proposer's:

_____ Telephone No.: _____

_____ Facsimile No.: _____

_____ E-mail Address: _____

Proposer's or Proposer's Contractor's Virginia Class A General Contractor's License Number

Proposer's or Proposer's Architects and Engineers Virginia Registration Numbers:

After first being placed under oath, I hereby certify that I have authority to submit this proposal on behalf of the Proposer whose name appears above, that I am a principal of the Proposer, that the Proposer hereby agrees to all of the terms and conditions in the Fauquier County PPEA Policy, as amended, that neither the Proposer nor any member of its team or their principals is currently suspended or debarred from public contracting by any federal, state or local government entity, that I have taken reasonable steps to ascertain the accuracy of all the information contained in this proposal and this certification, and that the information in this proposal and certification is accurate to the best of my knowledge or information and belief.

Signature

Printed/Typed Name

Title (Principal of Proposer)

Policy Title: PPEA Policy
Policy Number: FDP-02

Effective Date: 9/13/2013
Supersedes Policy: Rev. 6/12/2006

Commonwealth of Virginia :
County/City of _____ : to wit

On _____, (same name as above) appeared before me, and after satisfying me of his/her identity and after being placed under oath, swore to the truthfulness of the above statement.

Notary Public

My commission expires: _____

(If applicable) the Proposer acknowledges receipt of the following addenda:

Addendum No.: _____ Dated: _____
Addendum No.: _____ Dated: _____
Addendum No.: _____ Dated: _____
Addendum No.: _____ Dated: _____

APPENDIX B

NOTICE AND POSTING REQUIREMENTS

Requirement	Responsible Party	Unsolicited	Solicited
Provide any affected jurisdiction with a copy of proposal within five (5) business days of proposal to County	Private Entity	✓	
Any affected jurisdiction shall have sixty (60) days from receipt of proposal to provide comments to the County	Other affected jurisdictions	✓	
County may begin or continue evaluation during the sixty (60) day review period	County	✓	
Post proposals within ten (10) business days of acceptance	County	✓	✓
Posting shall continue for ten (10) business days	County		✓
Posting shall continue for not less than forty-five (45) days	County	✓	
Competing Proposals may be submitted within the forty-five (45) day posting window	Private Entities	✓	
Provide ten (10) day notice of public hearing required for entering into agreement	County	✓	✓
Public hearing must be held at least thirty (30) days prior to entering into a comprehensive or interim agreement	County	✓	✓

Summary:

Acceptance of unsolicited proposals will generally require a minimum of 150 days from receipt of proposal to signature of interim or comprehensive agreement. This estimate does **not** include time required for review and evaluation of proposals.

Solicited proposals will generally require a minimum of 60 days from date of issuance of RFP to signature of interim or comprehensive agreement. This estimate does **not** include time required for creation of RFP, posting and distribution of RFP, receipt of proposals, review and evaluation of proposals.

APPENDIX C

Terms and Definitions

"Affected jurisdiction" means any county, city, or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

"Conceptual stage" means the initial phase of project evaluation when the public entity makes a determination whether the proposed project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity Proposer, reviews the project for financial feasibility, and warrants further pursuit.

"Cost-benefit analysis" means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

"Detailed stage" means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Lifecycle cost analysis" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered. Public-Private

Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008 -29-**

"Material default" means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Opportunity cost" means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land of a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 56-575.5. Public-Private Education Facilities and Infrastructure Act of 2002, as amended Commonwealth of Virginia Procedures Revised January 17, 2008 -30-

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § 56-575.9.